

APPEAL NO. 010402

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 24, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) was intoxicated at the time of his injury of _____, and that he has not had disability. The claimant has appealed, asserting that he proved by a preponderance of the evidence that he was not intoxicated at the time he was injured on the job and that he has had disability. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on February 2, 2001, under a cover letter of the same date. The claimant states that he received a copy of the decision on February 2, 2001. The claimant had 15 days from February 2, 2001, or until February 17, 2001, in which to mail the appeal and another five days, or until February 22, 2001, for the appeal to be received by the Commission's central office in Austin. The envelope containing the appeal reflects that although it was mailed on February 16, 2001, it was misaddressed to the Commission's former post office box and zip code in (city) and that it was not received by the Commission until February 23, 2001, which was the 21st day following the claimant's receipt of the decision and order. The Commission's cover letter of February 2, 2001, stated the Commission's current address. Accordingly, the appeal, not having been received by the 20th day, is untimely.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge